



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 10, 1998

Ms. Amy Hodgins
Deputy Chief Administrative Law Judge
General Counsel
State Office of Administrative Hearings
300 West 15th Street- Wm. P. Clements Building
Austin, Texas 78711-3025

OR98-2652

Dear Ms. Hodgins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119305.

The State Office of Administrative Hearings ("SOAH") received a request for "SOAH Docket No. 453-97-0971.M4." You submit as responsive to the request a "Decision and Order" for the referenced docket number and two preliminary orders. You argue that the commission is not the proper custodian of the requested records, and also that the records are excepted from disclosure under sections 552.101 and 552.107(1) of the Government Code.

The requested information pertains to an appeal by the Texas Workers' Compensation Commission ("TWCC") Insurance Fund from the findings of the TWCC Medical Review Division granting reimbursement to a medical provider for certain services rendered to a workers' compensation claimant. Section 2003.021(c) of the Government Code provides that SOAH shall conduct hearings under title 5 of the Labor Code, the Texas Workers Compensation Act ("the act"). Section 402.073 of the Labor Code directs the TWCC to adopt, by rule, a memorandum of understanding with SOAH governing administrative procedure law hearings under the act. The memorandum of understanding includes extensive provisions regarding the confidentiality of information obtained by SOAH in connection with the hearings, including:

While SOAH will have temporary custody of the hearings records, the Executive Director of [TWCC] retains statutory authority as custodian of records and is ultimately responsible, as the originating agency, for the release or non-release of the information. Therefore, should any information, which may be confidential under [sections 401.001 et seq., Labor Code],

[TWCC] rules, or other law be requested from SOAH by any person or entity, SOAH shall follow all legal requirements to ensure that the confidential information or document is not released, unless specifically required by law, and shall provide such request to the [TWCC's] executive communication division immediately upon receipt.

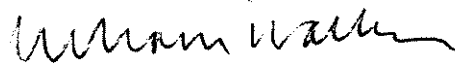
28 TAC § 149.6(c)

The memorandum of understanding also addresses in detail, *inter alia*, the treatment of confidential information at hearings. *Id.* See also, Labor Code §§ 402.083(a), 402.092 (information in or derived from claim file not to be disclosed by TWCC; information in commission investigation files confidential).

In our opinion, for purposes of the Open Records Act, SOAH is acting as an agent for TWCC in conducting hearings pursuant to section 2003.021(c) of the Government Code and handling TWCC information in connection therewith, but not as an agent for responding to Open Records requests for such information. Responsibility for responding to requests for information held by SOAH in connection with such hearings therefore lies with TWCC. *See*, Open Records Decision Nos. 617 (1993), 657 (1997). Persons making requests for such information should be directed to TWCC.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

RWP/WMW/ch

Ref.:ID# 119305

cc: Mr. Tim Poteet
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(w/o enclosures)